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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VALORIE WINN, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

MONDELÉZ INTERNATIONAL, INC. and  
PAK ‘N SAVE, INC.

Defendants.

Case No. 4:17-cv-02524-HSG

Honorable Haywood S. Gilliam, Jr.

**JOINT STATUS REPORT RE: PENDING  
APPEALS**

Pursuant to the Court's July 17, 2018 Order Staying Case Pending Appeals (Dkt. 37) and January 15, 2020 Order Continuing Stay (Dkt. 50), the Parties submit the following Status Report. In its July 17, 2018 Order, the Court identified three cases pending before the Ninth Circuit which might address similar allegations relating to preemption of state-law claims involving partially hydrogenated oil: *Hawkins v. The Kroger Company*, 9th Cir. No. 16-55532 and *Hawkins v. AdvancePierre Foods, Inc.*, 9th Cir. No. 16-5669, and *McGee v. S-L Snacks Nat'l, LLC*, 9th Cir. No. 17-55577 (previously captioned *McGee v. Diamond Foods, Inc.*).

On August 10, 2018, the Ninth Circuit issued an unpublished memorandum opinion affirming the district court's order granting defendant's motion to dismiss in *Hawkins v. AdvancePierre Foods, Inc.*, 733 Fed. App'x 906 (9th Cir. 2018). The opinion expressly declined to reach the preemption issue.

On October 4, 2018, the Ninth Circuit issued a published opinion in *Hawkins v. Kroger Co.*, 906 F.3d 763 (2018). The Ninth Circuit held plaintiff Hawkins had standing to pursue her claims relating to the use of partially hydrogenated oil, and that her consumer fraud trans fat label claims were not preempted, but expressly declined to reach the issue of state law preemption regarding the use (as opposed to the labeling) of trans fat/PHO.

The Parties believe this final issue relevant to this case will likely be addressed by the Ninth Circuit in the third case, *McGee v. S-L Snacks Nat'l, LLC*, 9th Cir. No. 17-55577, which was argued and submitted on December 5, 2018, more than sixteen months ago. For this reason, the Parties suggest a continuance of the present stay until a further status report, to be due either July 6, 2020, or within fourteen days of the decision (or other resolution) of *McGee v. S-L Snacks*.<sup>1</sup>

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<sup>1</sup> On January 6, 2020, the Honorable Yvonne Gonzalez Rogers also continued the stipulated stay of another trans fat use class action pending the resolution of *S-L Snacks*. See Dkt. 34, *Beasley v. Tootsie Roll Industries, Inc.*, 4:18-cv-07724-YGR (N.D. Cal.).

1 DATED: April 6, 2020

Respectfully Submitted,

2 /s/ Gregory S. Weston

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21 **Counsel for Defendant**

22 \* \* \*

23 **[PROPOSED] ORDER**

24 Pursuant to the parties' joint position in their status report, it is ordered that the stay of this case be  
25 continued until a further joint status report due July 6, 2020, or within 14 days of a decision or other  
26 resolution of the appeal *McGee v. S-L Snacks*, whichever is sooner.

27 DATED: \_\_\_\_\_, 2020

28 \_\_\_\_\_  
The Honorable Haywood S. Gilliam, Jr.  
United States District Judge